

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

IVEN LEE CALDWELL,

Petitioner,

-vs-

Case No. 15-C-293

BYRAN BARTOW,

Director, Wisconsin Resource Center,

Respondent.

ORDER

Petitioner Iven Lee Caldwell, who is serving a life sentence at Wisconsin Resource Center, seeks leave to proceed without prepayment of fees and/or costs (ECF No. 15) on his amended petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 (ECF No. 50). Caldwell is challenging his April 4, 2011, Milwaukee County Circuit Court conviction in *Wisconsin v. Caldwell*, Case No. 06-CF-4987 following the entry of a *nolo contendere* plea to a charge of first-degree intentional homicide.

To authorize a litigant to proceed without prepayment of fees and/or costs, the Court must make two determinations: first, whether the litigant is unable to pay the costs of commencing the action; and second, whether the action is frivolous or malicious. 28 U.S.C. §§ 1915(a)(1) and (e)(2). The Court must deny a request to proceed without prepaying the fee if (1) the

allegation of poverty is untrue; (2) the action is frivolous; (3) the action fails to state a claim; or (4) the action seeks monetary relief against an immune defendant. 28 U.S.C. § 1915(e)(2).

With respect to Caldwell's ability to pay the \$5.00 filing fee, his certified trust account statement discloses that his average monthly balance was \$803.17 and his average monthly deposits were \$71.34, which include regular payroll deposits. Thus, Caldwell is able to pay the fee for filing this action, and his petition to proceed without prepayment of fees and/or costs is denied. If Caldwell wants to proceed with his § 2254 petition he must pay the \$5.00 fee by the stated deadline. Failure to pay the filing fee by the stated deadline will result in dismissal of this action and denial of a certificate of appealability without further order of the Court.

NOW, THEREFORE, BASED ON THE FOREGOING, IT IS HEREBY ORDERED THAT:

Caldwell's petition to proceed without prepayment of fees and/or costs (ECF No. 15) is **DENIED**;


Caldwell must pay the \$5.00 filing fee **no later than June 20, 2016**; and,

Failure to pay the filing fee by the stated deadline will result in the

dismissal of this action and the denial of a certificate of appealability without further order of the Court.

Dated at Milwaukee, Wisconsin, this 16th day of May, 2016.

BY THE COURT:


HON. RUDOLPH T. RANDA
U.S. District Judge